IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 281 OF 1997

Balu Bapu Mane ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Shri U.B. Nighot for the appellant
Shri B.H.Mehta APP for State.

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CORAM ; V.G.PALSHIKAR &
V.C. DAGA, JJ.

DATED; 13TH JUNE, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 17-3-1997 passed by the IVth Additional Sessions Judge, Satara in Sessions Case No. 173/96, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution story stated briefly is that there was enmity between the accused and the victim since the election of gram panchayat for village Shirambe which took place on 25-11-1992. In this election the victim opposed the accused and the accused was elected in the said election. The incident occurred almost three years after the election, on 22-6-1995 when it is alleged that the accused inflicted knife injuries on the throat and body of the victim and the matter was then reported immediately to the police. Accused was arrested and investigation was completed and the accused was prosecuted in the sessions trial.

4. The prosecution examined 11 witnesses to prove its case and the learned trial Judge on appreciation of the evidence came to the conclusion of guilt. Consistent with that conclusion of guilt, he proceeded to sentence the accused to suffer R.I. for life. Feeling aggrieved by that conviction and sentence, the present appeal is filed.

5. P.w.1 Maruti has proved the spot panchanama. P.w.10 Dr. Satish has proved that the victim met homicidal death. P.w.11 PSI Chavan is the investigating officer who has stated before the court

the entire manner in which the investigation was conducted by him. P.w.2 Bharat is the witness to the arrest panchanama of the accused but he has turned hostile. However, that is inconsequence since the arrest of the accused is not in dispute. Apart from that P.w.6 Sharad has deposed before the court regarding the manner in which the accused was arrested. The arrest as observed earlier is not in dispute. Therefore the evidence of both these witnesses is inconsequential. Then P.w.4 Machindra Mane and P.w.7 Narayan, P.w.8 Rajan have turned hostile. Therefore their testimony is of no use in any manner to the prosecution as they have completely resailed from their earlier statement recorded by police.

6. That leaves only the evidence of P.w.3 Ranjana Mane wife of the deceased. She has deposed about the contest of the election in the year 1992 and the hostility that existed between the accused and the victim. She also admits the fact that the accused had won the election. She has deposed that she saw the accused assaulting the victim by means of knife and he has inflicted as many as 12 blows on the neck of the victim. She then states that she narrated the incident to Ankush Mane P.w.5 and Machindra Mane p.w.4, both of whom has been examined. In the cross examination she

admits that the elections were over three years ago from the date of incident and she heard the accused abusing the victim sometime. According to prosecution this hostility between the two is the motive to commit murder of the victim. The only witness P.w. 3 Ranjana wife of accused who has stated in her cross examination several contradictions which are material in nature. Apart from that there are also substantial omission from what she has stated before police and what she has stated before the court. According to her, she is the only witness to the assault. The fact that she is interested witness and that there was admitted hostility between the accused and the victim and the only witness for this is the wife. Corroboration to the evidence of wife on material particulars would be necessary for us to confirm the order of conviction. I have already narrated above that P.ws.2, 4,7 8 and 9 have turned hostile. P.w.1 is panch who proved the spot panchanama. P.w.10 is the doctor, who proved the homicidal death. Deposition of this doctor P.w.10 clearly shows that only five injuries were there on the person of the accused. P.w.3 Ranjana however says that the injuries were 10 to 12. There can be an error in this regard as the witness must have sturd by the assault if she say this. That difference cannot be so staggering. One injury is on the elbow. One is on the

shoulder and only two injuries are on the neck. The doctor therefore has stated that there were two injuries on the neck or around and in all six injuries. But P.w.3 Ranjana says that the stabbing was done at ten times around the neck. Ten times would a permissible exaggeration but it is not even five times. Exaggeration has to be viewed with a caution that the victim was having hostility with the accused. This hostility was known to the witness. The medical evidence as it stands does not corroborate the claim of the witness that 10/12 blows were inflicted. Apart from that the witness has stated that she disclosed the incident to Machindra who has been examined as P.w.4 and who has before the court flatly denied any such disclosure. P.w.4 Machindra has stated that at the time of incident, he was near the bus stand and he heard the witness p.w.3 the wife of the victim shouting that her husband is lying dead. But he has categorically denied that P.w.3 did disclose to him about the assault by the accused. He has denied the police statement. Then there is testimony of Ankush P.w.5 who does say that Ranjana told him about the assault by the accused. But according to him, the assault took place at 6 p.m. when the witness says that it was around 7.30 that the assault took place. That is her statement in the FIR. Even in the court

she has deposed that the incident occurred around 7.00 in the evening. There is thus no corroboration on any material particulars of the statement made by P.w.3 by any of the witnesses examined by the prosecution.

7. The motive is said to be the quarrel or hostility during the election of 1992. The hostility it is alleged, continued for about three years and one fine day i.e. the date of the incident, the accused stabbed the victim. In our opinion, this cause and consequence is grossly supported by time and there can be no nexus between the hostility of 1992 and the assault in 1995. Taking into consideration the disparity in the medical evidence and the deposition of eye witness, absence of corroboration by any other witness, we find it unsafe to rely on the totally interested testimony of P.w.3 wife of the victim, who says that the assault was committed by the accused. It is the case of the witness P.w.3 that after witnessing the assault, she crossed the stream, went into the locality and narrated the incident near the bus stand to P.ws. 4 and 5 Machindra and Ankush and came back. It is pertinent to note that Machindra was related to the victim and yet he does not corroborate to what has been deposed by the witness P.w.3. According to P.w.3 therefore she saw

the accused went into the locality informed others about it and came back and according to her accused was still there. The accused then crossed the witness and went towards the bus stand. Machindra P.w.4 stated that he heard the witness saying that near the bus stand about her husband being dead. But hd did not see the accused near the bus stand when according to P.w.3 the accused went towards the bus stand. According to us, the learned Judge committed an error in convicting the accused u/s. 302 IPC when there was no evidence of motive when the testimony of P.w.3 Ranjana was not corroborated by anybody. The material particulars vary in the deposition as also from the FIR as disclosed by the witness P.w.3. In our opinion, in such circumstances, conviction could not ensued. The learned trial Judge therefore erred in convicting the accused on such scanty evidence. The state of evidence is such as it gives rise to doubt as to whether the prosecution has come out with a complete real story and therefore we find it unsafe to rely on the uncorroborated testimony of P.w.3 for maintaining the conviction. In our opinion, the benefit of such situation must go to the accused.

8. In the result therefore the appeal succeeds and is allowed. The accused is on bail. His bail bonds are therefore cancelled. He is acquitted of the charge u/s. 302 IPC. The sentence as recorded by the learned trial Judge is set aside.

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